

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROBERT L. BYRNES,

Civil No. 04-4577 (DSD/JJG)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

**METROPOLITAN LIFE INSURANCE
COMPANY,**

Defendant.

JEANNE J. GRAHAM, United States Magistrate Judge

The above entitled matter came before the undersigned United States Magistrate Judge on Defendant Metropolitan Life Insurance Company's Motion for Dismissal Without Prejudice. (Doc. No. 29). This case has been referred to the undersigned for resolution of pretrial matters pursuant to 28 U.S.C. § 636 and D. Minn. LR 72.1.

On November 30, 2005, the Minnesota Supreme Court issued a decision, *In re Petition for Disciplinary Action Against William Albert Plummer*, 706 N.W.2d 482 (Minn. 2005), adopting the jointly recommended disposition of Mr. Plummer being suspended from the practice of law for 60 days effective 14 days from the filing of the Order. Mr. Plummer is the attorney of record for plaintiff in this case.

This Court has received no communication from Mr. Plummer or plaintiff Byrnes regarding the suspension or the instant Motion to Dismiss. On January 30, 2006, this Court ordered plaintiff Byrnes to

notify this Court in writing of his intention to proceed *pro se* or provide written notice to this Court of new counsel in this action on or before Monday, February 13, 2006. The Court further ordered Mr. Byrnes, or his new counsel, to file with the Clerk of Court and serve on opposing counsel any response to defendant's Motion to Dismiss Without Prejudice, by that same deadline.

In its January 30, 2006 Order, the Court indicated that if it did not receive written notice from plaintiff, or receive an opposition to the Motion to Dismiss, the Court would issue a recommendation, pursuant to Federal Rule of Civil Procedure 41, to District Court Judge David S. Doty that this matter be dismissed without prejudice. This eventuality has come to pass.

Because the Court has heard nothing from the plaintiff in this matter, despite the Orders of the Court and dispositive filings made by the defendant, the Court finds that continuation of these proceeding will serve no interest of the Court's or of the parties. Therefore, the Court recommends defendant's motion be granted. The Court further recommends that Plaintiff be free to file his complaint anew, pursuant to all applicable rules of procedure and laws of limitations, once he has determined the proper course for the representation of his claims going forward.

Accordingly, **IT IS HEREBY RECOMMENDED** that Defendant Metropolitan Life Insurance Company's Motion for Dismissal Without Prejudice (Doc. No. 29) be **GRANTED**, without cost to any parties.

Dated: February 16, 2006

s/Jeanne J. Graham

JEANNE J. GRAHAM
United States Magistrate Judge

Pursuant to D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing and serving specific, written objections by March 8, 2006. A party may respond to the objections

within ten days after service thereof. Any objections or responses filed under this rule shall not exceed 3,500 words. A District Judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the United States Court of Appeals for the Eighth Circuit.